

JUN 17 2020

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

JUN 17 2020

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DAVERNE MICHAEL FOY
DEPUTY CLERKCLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DAVERNE MICHAEL FOY
DEPUTYDAVERNE MICHAEL FOY,
MOUANT - PETITIONER,

)

CASE No. 1-17-CR-00172-001

V.

UNITED STATES OF AMERICA,
RESPONDENT.

)

FOY'S MOTION FOR RELEASE TO MONITORED
HOME CONFINEMENT DUE TO THE COVID-19 PANDEMIC

Comes Now, Daverne M. Foy, Mouant, acting on Prose in the above
Cause numbered and would show the Court as follows:

JURISDICTION

This Court has jurisdiction pursuant to Ceres Act of 2020, 18 USC
3582(c)(1)(A), First Step Act, 2018, U.S.S.G. 51B1.13.

PROCEDURAL HISTORY

- I 1. Foy was convicted of Conspiracy to Distribute and P.W.I.D., More
than 100kgs of Marijuana. Violation of 21 USC 841(b)(1)(B) and 846. And
was sentenced to 90 months imprisonment.
2. Foy has been confined in FMC Fort Worth, since 11-07-2017.

II Summary of the Relief Requested

3. Because of (1) the pandemic caused by the Covid-19 virus, (2) Foy's
vulnerability due to his age (49) and listed medical conditions, (3)
the unacceptable conditions inside Bureau of Prisons ("BOP") units in
general but especially FMC Fort Worth, where Foy is incarcerated.

and (4) Foy's qualifying for compassionate release, under 18 USC § 3582(c)(1)(A), Foy asks this Court to promptly release him to monitored Home Confinement for the duration of his sentence.

4) Foy is entitled to protections under the Eighth Amendment's prohibition against cruel and unusual punishment. He will comply with all conditions of release to Home Confinement including electronic monitoring. Both Foy and the Community will be safer if he is released to monitored Home Confinement. He has the support of his family.

5) Covid-19 has made the danger and overall conditions within BOP and specifically FMC Fort Worth unacceptable.

6) The problems that Covid-19 has caused is known to this Court. Circumstances have substantially changed since Foy was detained. Covid-19 is now a global and National health emergency. It presents a clear and immediate danger to Foy and his community. It appears to be at least 30 times deadlier than past strains of influenza. It kills the elderly and the ill at high rates. Detention facilities are now "hot beds of this virus."

7) When infections begin in the BOP and other detention facilities the virus spread into the community quickly. On March 28, 2020 the first BOP inmate died due to complications caused by Covid-19. Since that first death occurred two months ago. As of June 1, 2020, per BOP federal Web site, over 2,500 inmates and 650 staff have confirmed positive test results for Covid-19, 81 inmates have died and 6 staff. See BOP, Covid-19 CORONAVIRUS at BOP web-site.

8) DCAKcerctin poses a pronounced public health threat to the Community in general and it is now pronounced due to Covid-19. "Covid-19" poses a serious risk to inmates and workers in detention facilities.

9) The situation at FMC Fort Worth and the risk it poses to Foy has become unacceptable. Per BOP as of April 28, 2020, more than 750 inmates at FMC Fort Worth have tested positive, and (12) have died. Nearly 20% of all Covid-19 cases in federal prisons are at FMC Fort Worth. Foy's family concerned as coronavirus cases skyrocket in Fort Worth federal prison.

10) Foy has had tremendous difficulty obtaining a response from the Warden here at FMC Fort Worth. He has filed administrative remedies and no one has responded to his requests for relief. The virus is spreading quickly in the entire unit. Just recently received a reply. However, the reply did not address my medical conditions.

11) There is no social distancing inmates are crammed in the units without the ability to go outside. We are not receiving adequate medical attention and just recently are having our temperatures checked. There is no training for employees about safe working conditions or procedures during a pandemic. Inmates are not being given cleaning or protective equipment, including masks, sanitizers, gloves, bathroom soap, and cleaning supplies. Just recently the unit was finally disinfected for the first time in 6-weeks. The facilities for hygiene in the unit are limited.

12) There is no reason to expose Foy to this acute risk. Foy is entitled to the Eighth Amendment prohibition against cruel and unusual punishment. In other words he is entitled to not be killed by complications caused by Covid-19. The 90 month sentence imposed by this Federal District Court is not and was never intended to be "a death sentence" to subject Foy to possibility of infection and high probability of death is cruel and unusual. Foy's life and the lives of the community are best protected by his release to monitored Home Confinement.

13) Foy falls within one of the most at risk populations for this disease. He is 49 yrs old and has numerous underlying medical conditions with serious health issues which consist of the following
 1) history of pneumonia, TB treatment, high blood pressure, high cholesterol, lung complication with respiratory & breathing difficulties. Hypertension and some weight loss. Acute chronic chest discomfort. Pulmonary/Respiratory. infection/inflammatory process in lower lung zone.

14) If released, Foy will live at 8532 N. LAMAR BND Apt 5251 Austin, TX 78753, Britny Rodriguez / France Foy will have help with his medical situation. Foy has his own bedroom. The family has practiced all CDC-recommended social distancing guidelines and have adhered to "Shelter in place orders." Foy will be far safer at home. If Foy is allowed released he will practice social distancing and follow all CDC, State and Local guidelines, which requires the Vulnerable and elderly to continue sheltering in place.

15) This evidence show that releasing Foy to monitored Home Confinement is a viable and immediate solution. As explained below the consensus among public health experts reflects that Foy's release is critical to reduced incarceration to contain the spread of this virus. It is thus critical for Foy's safety and safety of the community that he be released to monitored Home Confinement.

16) Covid-19 is an extremely dangerous disease for those like Foy's group Black/Americans who are acutely vulnerable. But covid-19 cause some populations groups to die at far greater rates than others. A person likelihood of dying from this disease appears to vary dramatically depending on two key factors (1) demographics profile; and (2) Environment.

17) Covid-19 Kills the sick and elderly at incredible rates.

<u>CONDITION</u>	<u>CASE FATALITY RATE</u>
CARDIOVASCULAR	13.2 %
DIABETES	9.2 %
Hypertension	8.4 %
CHRONIC RESPIRATORY DISEASE	8.0 %
CANCER	7.6 %

See World Health Organization, Report of the "WHO" Heart Conditions and Hypertension being among the top killers is a problem worldwide. Foy, who is imprisoned at FMC Fort Worth, is at greater risk for severe illness from Covid-19.

18) In the past few months, the World has changed dramatically. ON MARCH 11, 2020, the World Health Organization classified the spread of Covid-19 as a Pandemic. ON MARCH 13, 2020, President Trump

declare it a National emergency. Covid-19 has infected over 1.2 million people in the United States and caused over 105,000 deaths. Cases continue to occur here at FMC Fort Worth to include One more death.

19) On FMC Fort Worth, where Foy is imprisoned 800 inmates and 12 staff have tested positive, 12 inmates have died. With the second highest number of positive inmates cases, the facility "has emerged as a Covid-19 hot spot." 20 of the 81 BOP inmates who have confirmed deaths from Covid-19 were serving sentences for drug offenses.

20) Prisoners "are at special risk of infection" but unable to take protective measures, Foy who is in a unit with over 250 inmates who have tested positive is at even greater risk. Because of these factors Foy is twice likely to be hospitalized and need critical care for Covid-19. His hospitalization at John Peter Smith Hospital, where FMC Fort Worth inmates are treated, and his critical care needs would burden the Hospital and his facility's medical services, which are already stretched. Even if he were not hospitalized his continue incarceration would put others at risk, including other prisoners, staff their families, and surrounding community.

III FOY'S REHABILITATION AND HIS FAMILY SUPPORT WILL HELP HIM SUCCEED IN THE COMMUNITY.

Based on the 18 USC SECTION 3553 (a) factors:

I have successfully completed over 48 programs. I have taken the initiative to rehabilitate my self during my incarceration. I have earned my "GED", and a Senior in College with only one semester left to graduate with an academic degree. Taken both 40 hours and 12 hour non/residential drug abuse treatment program. I have completed the HVAC Vocational Program, with certification, attached for the Courts review is my Inmate Education Data Transcript, which clearly supports the numerous classes that I have been enrolled in and successfully completed for a successful reentry into the community, upon my release. Please note that I have 108 hours of class room instruction in my HVAC Course, and ~~484~~ 484 hours in Business Computer, 36 hours in Accounting, 180 hours in Welding class room instruction.

I have worked as a medical orderly by pushing handicap inmates during my stay here at Finc Fort Worth, and realize how fortunate I am to become a better person and live a law abiding life and productive citizen upon my release.

I have the full support of my entire family. My (4) Wonderful children, My daughter De'Andrea Toy Age (20), and my 3 sons, Jeramiah (15yrs) Joshua (10yrs) and Josiah (7yrs) and most importantly my Fiance Britny Rodriguez.

I will be residing with my Fiance Britny Rodriguez at 8532 N. LAMAR Blvd, Apt #5251, Austin TX 78753. if approved for release.

I have the support of my many extended family members that will provide me with numerous employment opportunities based on all the skills I have learned as documented by my attached Inmate Education Data Transcript.

In further support of all my Underlying medical conditions see attachment of all the Medications that are currently prescribe for my illnesses.

CONCLUSION

Foy submits that the Court take judicial notice that he has been waiting 7 months to see Lung specialist and get a C.T. scan for my lungs, also been at this facility for 3 yrs tested positive in 2018, and Medical Staff neglected my medical conditions or treatment, in 2020, 2 yrs after being positive they (medical) administer treatment (TB), of which the treatment weaken my immune system of which I tried to refuse said treatment, however I was force by the Doctors take continue treatment or I'll be isolated again.

See attachment of all the Providers, Attachment (E)
Had all these providers and still have medical issues Nobody within the FMC Fort Worth Medical Staff can figure out whats wrong with my lungs, until I see a specialist, all this happen before the Covid-19 Pandemic, which now places me in a High Risk group for Covid-19 infection and possible death!

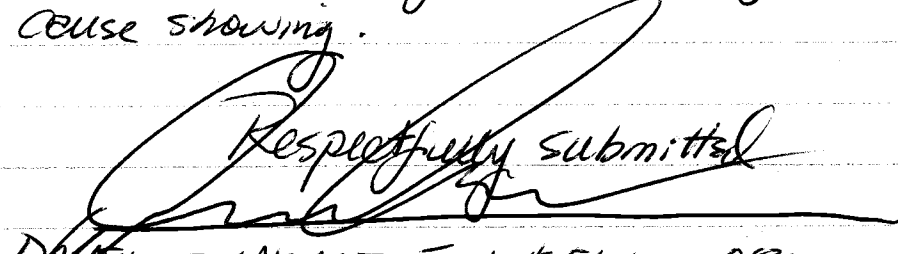
Foy submits that the Court take judicial notice under F.R. Evid. 201 - that Foy had to wait six months to obtain his Medical Records. Just received them 1st month.

I am respectfully requesting that this Court take into consideration that I have served over 50% of my statutory required term. In addition, I pray to the Court that based on the fact that I have been incarcerated over 4 yrs on 90 month sentence with excellent progress reports and rehabilitation, that this Court consider a time served term as an appropriate final judgment in this case, further supported by the history of my present 18 U.S.C. Section 3553(a) factors.

WHEREFORE: Petitioner prays that the Court grant the relief sought based on good cause showing.

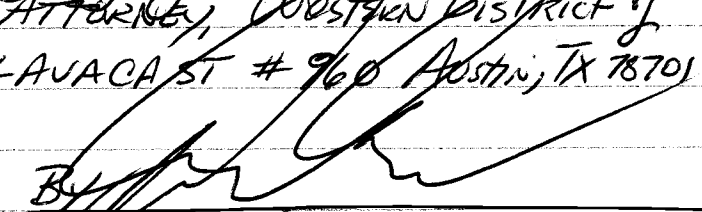
DATE 06/15/2020

Respectfully submitted


 DWAYNE MICHAEL FOY # 56455-080
 Federal Medical Center P.O. Box 15330
 Fort Worth, TEXAS 76119

CERTIFICATE OF SERVICE BY U.S. MAIL

I certify that a copy of the foregoing was sent on this 15th day of June 2020, TO: U.S. ATTORNEY, Western District of Texas, Austin Division, at 504 LAVACA ST # 960 Austin, TX 78701


 DWAYNE M. FOY
 # 56455-080
 FMC FTW POB 15330
 Fort Worth, TX 76119